Oberholtzer reviews them very fully, devoting more than one-third of the book to different phases of the subject. The matters in regard to which such a vote is taken are of endless variety, but the author makes it appear very clearly that, until the recent imitation of Swiss methods, the Referendum, both general and local, (and for that matter the Initiative as well) was confined to definite questions determined beforehand by law.

In his chapter on the Initiative, Mr. Oberholtzer points out the curious fact that it has been found necessary, especially in the case of efforts to change the county seat, to restrain the use of the Initiative by allowing petitions for the purpose to be presented only at long intervals, by requiring a large number of signers, and by insisting on a guarantee against pecuniary loss to the community.

This remark leads naturally to the only general criticism—if it be a criticism—that we have to make on the book. The work is devoted to a study of the legal provisions for the Referendum, and tells us little of its actual results. The author does indeed point out the smallness of the vote cast, and the common tendency of the people to vote for or against all the questions presented at one time without discriminating much between them. But except for this, there are only scattered references here and there to particular votes, with nothing in the nature of an attempt to collect or tabulate the results. The Referendum and the Initiative in the Swiss form have, indeed, been adopted here too recently to make their use of any consequence as yet, but in the native form, which Mr. Oberholtzer thinks decidedly the best suited to our condition, the Referendum has existed for a long time, and a general collection of statistics concerning its effects might be highly valuable. Perhaps he may at some time in the future complete his subject by doing this work. If so, he may feel assured that we shall be even more grateful to him than we are today.

A. LAWRENCE LOWELL.

English Common Law in the Early American Colonies. By PAUL SAMUEL REINSCH, Ph.D., LL.B., Assistant Professor of Political Science in the University of Wisconsin. (University of Wisconsin. 1899. Pp. 64.)

THE ordinary theory of the courts regarding the beginnings of the common law in America is, of course, that the early settlers brought it with them as a birthright (so far as applicable to their conditions) and looked upon it from the first as a positive system wherever not replaced by colonial enactment. Such a statement, Dr. Reinsch rightfully contends, is historically incomplete and inaccurate. The points he urges in modification may be summed up as follows: (1) When the early settlers did refer to their inheritance in the common law, they had in mind only certain general principles of personal liberty, not the highly complex and technical English system; (2) in New England in particular there was a considerable period in which the common law was not consciously re-

garded as binding, and in which indeed it was sometimes consciously rejected; (3) even in the other colonies there existed at first a rude, untechnical, popular law—the child of American conditions, departing widely from the English common law in fact and indifferent to it in theory; (4) it was at a later date, toward the end of the seventeenth century, that the growth of trained lawyers and the pressure from the mother-country brought about the recognition of the English system—which continued, however, to be affected vitally by the earlier American popular law. These positions are justified by an examination into the legal ideas and practice of the early settlers, colony by colony, from north to south.

The criticism is sound; and historians and jurists alike are under obligations to Dr. Reinsch for emphasizing it. It is the more a matter of regret that the monograph is marred by many blemishes. Only a few can be noted here. The author tends to exaggerate his points. There is much repetition within small compass, where greater detail instead would be acceptable. The geographical order of investigation fails to justify itself. There is a curious determination to find "reversions" (on pages 5, 8, 19, 33, 37, 46, and 55, out of fifty-five pages of text): none of these are very clear, and many clearly are not reversions. Thus the union of powers in colonial councils (p. 33) is certainly not an *American* reversion; the courts of justices in Virginia (p. 46) were not a "reversion to the very archaic type of Doomsmen of the Anglo-Saxon courts," but a remarkably good copy of an existing English institution; the practice of attainting juries (pp. 19 and 56) was not a "reversion" to an "archaic" custom, but a natural continuance in America of a practice just dying out in England.

Other misstatements abound. The idea that unification of legal principles (p. 9) was in any way due to a growth of national feeling before the Revolution seems an unjustifiable assumption. That magistrates heard cases involving small sums without a jury (p. 13) and that men were fined for "seditious" speech (p. 15) are rather illustrations of the influence of contemporary English practice than the contrary. The Massachusetts *Body of Liberties* (of 1641) could hardly have "re-enacted" (p. 13) a clause of the "fundamentals" (?) of 1646. It is hardly fair to assure us twice that the men of Massachusetts regarded Magna Charta as the "embodiment of the common law" (p. 21) on the authority of a document which has only nine references to Magna Charta and twenty-nine to other "Common Lawes of England." It is impossible to close without regretting the author's frequent dependence upon secondary authorities in a treatise which has for its express purpose to combat vague views accepted on just such a basis. The close following of Campbell's *History* (p. 46) on the Virginian courts is particularly unfortunate—especially in the statement that the "General Court" grew up by custom, seeing that this court was instituted by the earliest charters, and that its appellate jurisdiction (probably the matter in question) was expressly reserved when the county courts were originally established.

W. M. West.